CONFIDENTIAL: FOR YOUR EYES ONLY!

August 6, 1971

Mr. David W. Belin
Herrick, Langdon, Belin and Harris
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Dear Mr. Belin:

Thank you very much for your letter of August 3. I appreciate the fact that you are willing to assist me with these matters. Since your letter requests a response from me before you will answer the questions contained in my letter of July 12, I will gladly respond immediately so that you need not hesitate in making your response.

First, you repeat part of the substance of my third question, relating to a time reconstruction in the Tippit murder. You accuse me of quoting out of context because I say you walked "that route"--meaning the route Oswald supposedly walked--and clocked it at 17 minutes, 45 seconds. You refer me to the testimony to show that you actually walked a "long way around route" rather than "the most direct route." If you will refer to my letter of June 12, you will see that I did not quote out of context because I immediately mentioned the fact that in giving this time, you stated you had not walked the most direct route. I also directed you to the page in the hearings to which you have directed me. You further assert that a diagram in the Report marks the distance (again not the most direct route) at .85 miles and add that it can be walked in less than 15 minutes.

While I agree with you that .85 miles can be walked in less than 15 minutes, I am still puzzled by the fact that the only timed reconstruction conducted in <u>that</u> neighborhood was a "long way around route." If the time obtained for this is irrelevant to the time it would have taken Oswald to walk from his roominghouse to the site of the murder, as you seem to imply, then it is a mystery to me why apparently no one with the Commission bothered to reconstruct the more direct routes, just to be sure. Further, if you check my question, I asked you, in part, why you did not learn the time the direct route would have taken. I am not interested in the fact that the <u>distance can</u> be walked in under 15 minutes. I want to know, and indeed asked, why you didn't bother to find out the time for the more direct route, especially in light of the fact that you devoted at least 17 minutes and 45 seconds to walking a route you now seem to imply has no bearing on whether Oswald could have made it on time. I believe we can both be saved time and effort if you will read my questions more closely and not present me with facts which I have already pointed out, thus of which I am aware.

On page 2 of your letter you pose a series of questions which I shall attempt to answer. You first wanted to know how I "would reconcile a possible theory of Oswald not having Killed Officer Tippit based on time approximations which are inherently inexact with the overall comprehensive evidence which included..." at which point you named several considerations. First let me point out that, although you do not accuse me of it, I do not embrace a theory of Oswald's innocence in the Tippit murder based on the time approximations. However, I do not believe that the considerations you name can be fairly related to a theory assuming Oswald's guilt. Some are hard to reconcile with a theory of guilt <u>or</u> innocence. To answer your rather sweeping question, I will give you my brief assessment of each of the considerations you name.

1. "...the conduct of Oswald before he entered the Texas Theater..."—By this I take it you mean to refer to the conduct of the man who several people identified as Oswald. In reference to this man's conduct, I cannot explain some of his actions. True, he was seen at some points to be running with a gun in his hand. However, when he was seen running, he was well removed from the scene of the murder. Thus, his running, while suspicious, does not establish him as the murderer. His actions at the scene of the crime are a mystery to me. As you must know, there he was in no hurry to escape, and after killing Tippit, proceded rather casually to remove the empty casings from his gun and drop casing on the ground, in the open., Though I do not offer this as fact, it is my belief that the casual behavior in leaving incriminating evidence at the scene of the crime and the subsequent running are not consistent with each other.

2. "...the manner of his entry into the theater..."—this is based on the testimony of one man who inferred Oswald entered the theater without paying. The two people at the theater who might have seen Oswald's entry did not, so it is hard for me to know his exact "manner of entry." If it were possible fore someone to enter the theater without paying, then I think they would have done this whether or not they were fleeing a crime, simply to gain free admission. If, however, someone were escaping a crime and wanted refuge from the police, I would not think he'd attempt to illegally enter the theater, thus taking the chance of drawing attention to himself. Again, this is merely a possible interpretation of the facts. Oswald <u>may</u> have been seeking refuge when he entered the theater, but the fact that he entered without paying is not in itself proof of that. I should also point out that when the police entered the theater and began searching the occupants, Oswald had the opportunity to leave, or at least attempt to leave. However, he did not.

3. "...the fact that when Oswald was apprehended in the Texas Theater he carried a concealed weapon which in and of itself is a crime..."—To this I can say only that Oswald's guilt in one crime does not establish his guilt in another although, from certain perspectives, it can contribute to a superficial case. Also, I do not find it particularly outstanding in itself that a Dallas resident was carrying a weapon, even if it was concealed.

4. "...the fact that as an officer approached him in the Texas Theater, he pulled out his pistol, hardly the act of an innocent man..."—If you will consult the record, Oswald did not pull his gun until he was involved in a physical fight with the policeman, not as the officer approached him. While you may regard this as other than the act of an innocent man, I cannot exclude the possibility that it was the act of a man who felt his life was in danger, whether or not he was innocent. Neither of us can reach into Oswald's mind to find out just why he pulled his gun.

5.."...the fact that this pistol had been ordered through the mail by Oswald..."—This merely tells me that Oswald was carrying his own pistol.

6. "the fact that this pistol to the exclusion of all other weapons in the world fired the cartridge cases dropped by the gunman at the scene of the Tippit murder..."—This fact in itself proves beyond a doubt that whoever dropped the cases at the scene of the crime had somehow obtained cases fired from Oswald's pistol. It does <u>not</u> prove that these specific cases came from the pistol he had just fired nor does it prove that Oswald to the exclusion of all other people in the world fired the pistol which produced the shells or which killed Tippit. You fail to mention the fact that the bullets from Tippit's body could be traced to <u>no</u> specific weapon because they had been too mutilated. One expert testified that he thought he could connect one of the bullets to Oswald's pistol based on one mark which he found.

However, another expert testified he could make no specific connection of any of the bullets and added his opinion that this would have been impossible because the barrel of the pistol was slightly large for the bullets, thus their passage through the barrel was too erratic to leave reliable markings.

You also fail to mention the fact that three of the bullets recovered from Tippit's body were manufactured by Winchester-Western, and the fourth by Remington Peters, although only two of the four discarded shells were made by Winchester-Western and two by Remington-Peters. This means, of course, that no positive correlation can be drawn between the bullets found (which could have been fired from several guns) and the cartridge cases (which came from Oswald's pistol). If the bullets really did come from the found cases, then one Winchester-Western is missing, and there is an extra Remington-Peters. Unless five shots were fired. However, neither of us can prove that five shots were fired or that the bullets in question came from the specific cartridge cases. Thus, while it may be said that the cases came from Oswald's pistol, there is a step missing in the proof that these cases fired the bullets which killed Tippit.

I might point out, in this connection, that there is nothing to prove that the shells the gunman left at the scene were a)fired at that time or b)in the pistol. The gunman could have kept the shells he dropped in his hand while he commited the murder and made it appear as if he were ejecting them from the gun, especially since no witness was close enough to be certain the shells came from the pistol. I cannot prove this just as you cannot prove the found shells once held the found bullets. I do find it strange, however, and without conclusive explanation, that there is a discrepency between the makes of the cases and the bullets.

7. "...and the collective testimony of eyewitness identification of Oswald at the Tippit murder scene with a pistol in hand."—As I said earlier, the fact that Oswald was running with a gun in his hand near the scene of the crime does not prove him the murderer. Further, especially because he was running, I would say that the witness identifications , if accepted at face value, could be taken to show only that someone resembling Oswald was running. Further, the character of the line-ups and the witness accounts often lead$ me to believe that the former were less than fair and the latter less than reliable.

I believe the record relating to Mrs. Markham's "positive identification" of Oswald as the man she saw shoot Tippit demonstrates that she was not at all positive. To begin with, she was "quite hysterical" when brought in to view the line-up. (Report, p. 167) In her testimony, she explicitly stated that she had never seen any one of four men in the line-up ever although when confronted with this in light of the fact that she identified Oswald, she said "I thought you wanted me to describe their clothing." She added that while she "wasn't sure" about Oswald's appearance, looking at him gave her "cold chills," which apparently induced the "identification." (volume 3, pp. 310-11.)

There are also doubts about Mr. Scoggins' identification. Before attending a line-up on Saturday, November 23, he viewed Oswald's picture in the paper (volume 3, p. 334) which might have prejudiced him. He also related an incident in which it seems he identified a picture of someone other than Oswald out of a group of pictures including Oswald's. (3H335) Also, the line-up which Scoggins attended appears to have been grossly unfair. Another attendant said, "You could have picked (Oswald) out without identifying him by just

listening to him because he was bawling out the policeman....anybody who wasn't sure could have picked out the right one just for that." (see volume 2, p. 261) Although the witness who gave this account was not reliable on other matters, here he is corroborated by a police office present at this line-up, Detective Leavelle. (see volume 7, p. 266)

The stories of the Davis sisters leave me with doubts about their reliability as witnesses. For instance, contrary to the observations of everyone else who observed this man, Mrs. "Charlie" Davis thought he was wearing a black or dark coat. (volume 3, p. 347) The official story is that it was light gray. Her sister rembered five men in the line-up and actually gave descriptions of each one (volume 6, p. 462) while there were only 4 men there (volume 24, p. 347).

It is also my impression that the three men who appeared in the Friday line-ups with Oswald (see volume 22, p. 1) all look significantly older than him. Also, all are very respectable looking men while in the line-ups that day Oswald wore a torn shirt with several buttons missing, and was cut and bruised about the face.

So, while I cannot prove that the witnesses were knowingly or even unknowingly wrong in their identifications of Oswald, I submit that there is adequate room for doubt about the identifications--because of unreliability in parts of some witnesses accounts, plus the emotional condition of at least one, and the way in which attention would have been drawn to Oswald--for the objective analyst to conclude that no witness firmly places Oswald at the scene of the crime as the murderer.

You also ask me, pending your response to my original questions, "if there is still any doubt in (my) mind that the Warren Commission finding that Oswald killed Tippit was correct." You also ask that I spell out any doubt in complete detail so that you may help me clear up the doubt.

In answer to this request, based mostly on the factors outlined above, I am left with doubts about the finding that Oswald killed Tippit. The Commission simply failed to <u>prove</u> that he was guilty of this crime. There is a superficial case, I would agree, repleat with all sorts of actions and innuendoes seemingly incriminating of Oswald. But the Report gives no citation of proof that Oswald could have gotten to the scene of the crime on time, it does not prove the cases found and fired (at some time) from his pistol actually held the bullets which killed Tippit, and it offers no really solid witness identification of Oswald as the murderer. A major shortcoming as well, I think, is that none of this evidence is ever considered in a light exculpatory of Oswald. Your own apparent evaluation of Oswald's actions after the Tippit murder seems to take for granted that Oswald killed the officer. Nowhere in the records of the investigation or in the final Report have I seen the consideration that, for example, someone tried to frame Oswald--which might explain why the murderer was so blatantly obvious in leaving the incriminating evidence at the scene.

I am not saying that Oswald was either innocent in or framed in this murder. But I am definately saying the Commission failed to <u>prove</u> his guilt even beyond reasonable doubt and it did not eliminate other possibilities, i.e., that he was in fact set-up to appear as the murderer. I have doubts and cannot provide a conclusive answer either way. Had I been sitting on a jury and had

only what is presented in the Warren Report to consider, I would have been compelled to find Oswald innocent in the Tippit murder because his guilt had not been proven beyond reasonable doubt.

Further, please understand that while I would welcome any comments you may have on matters outside of what is addressed in my letter of July 12, I have not specifically solicited your remarks in such cases. Thus if you feel burdoned by responding to all I have written in this letter, please do not feel obliged to consider everything in your response. Of course, if you wish to remove the existing justifications for "doubts," you will have to reconcile every point I have made, to my satisfaction. Still, my real interest is for your response to my letter of July 12.

You next ask that I spell out to you "in complete detail" those instances of "reckless conduct" on the part of Commission investigators as well as "indications that the Report is in fact 'inaccurate.'" This letter and that of July 12 will have to suffice for this request. The instances I have in mind are too numerous and detailed for me to present each to you. Also, most do not relate to your work on the Commission so I would not consider it proper to have you account for them. Everything which I have presented to you entails the investigation which you conducted, thus, I believe, for which you are accountable. My questions on other areas must go to the staff lawyers who worked in those areas.

I do not understand the relevance of your comment concerning my question about Brennan and his clothing description. You are absolutely correct that "whenever you have two or more witnesses to an event you are bound to have differences in testimony because it is most natural for people to see the same thing and arrive at different conclusions on what their observations were." Your pointing out that two people who worked with Oswald gave directly opposing accounts of the clothes he wore daily, I believe, does not affect my point on Brennan. The portion of his testimony to which I directed you is rather explicit that Oswald in the line-up was not dressed the same as the man he saw in the window. Brennan's account of what the man in the window wore (basicay light clothing, probably khaki) is confirmed by every other witness who saw this man in the window, including one not recognized by the Commission. So I think there is a firm basis for my point here. Further, I did not ask you if it were possible Mr. Brennan were inadvertantly wrong in this observation. I merely asked why his statement to this fact was not included in the Report. Since you introduce the possibility, I will add to my original question: Did you take any steps to find out if Mr. Brennan in fact was incorrect in this observation, and, if so, what steps did you take? If you took no steps, I would would be interested in knowing the reason for your failure to do so.

You seem to make the point that an analyst who isolates one aspect of a progression of proof and assesses a situation on the basis of the one aspect will necessarily deceive himself for he will be examining information out of context. I am inclined to agree with that and, if it is any comfort to you, I try not to approach my investigation from that perspective. The points mentioned in my letter of July 12 are not intended to be in any larger context and I do not take any one as proof of something which requires a broader scope of vision for "proof." However, my caution to you is that a chain is only as strong as its weakest link. If you wish to develop a progression of

reasoning toward a conclusive proof, obviously every element of your reasoning must be sound. Thus, while things must be viewed in a broad, over-all context, they must also be studied on a micro-level. Any "weak link" is a serious threat to the strength of the ultimate conclusion. A conclusion based on a continuous series of "weak-links" is not really a conclusion at all, but more a supposition based on the pretext of some "broad perspective."

I hope this letter has been of assistance to you so that you may now proceed to address and fully respond to the points raised in my letter of July 12.

I am indeed looking forward to your response.

Sincerely,

Howard Roffman
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